



DAC
#8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Keith et al.
Serial No. : 10/024,701
Filed : December 17, 2001
Title : METHODS FOR PREPARING PURIFIED DAPTOMYCIN

Art Unit : Unknown
Examiner : Unknown

BOX DAC
Commissioner for Patents
Washington, D.C. 20231

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JUN 17 2003
OFFICE OF PETITIONS

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR §1.47(A)

This is in response to the Decision to Refuse Status Under 37 CFR §1.147(a). Specifically, in the Decision, the petitions attorney asserts the following: 1) "Rule 47 applicant has failed to show that the non-signing inventors Govardhan and Khalaf refused to sign the declaration after having been presented with the application papers"; 2) "No evidence has been presented that the inventors are represented by Richard Forrest."

In response, Applicants submit the following:

1) A letter from the undersigned to Shannon Shippie of Cubist Pharmaceuticals dated April 11, 2002 enclosing a Combined Declaration and Power of Attorney. As indicated in the letter, the inventors, Chandrika Govardhan and Nazar Khalaf, were copied with enclosures on this letter; and

2) A Declaration of Laurie Butler Lawrence in Support of the Petition Under 37 CFR 1.47(a). This Declaration indicates that Laurie Butler Lawrence received correspondence from Richard Forrest on June 20, 2002 indicating that the inventors were in possession of the Combined Declaration and Power of Attorney and indicating that Richard Forrest represents the

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Deposit

6/11/03

Signature

Cassandra Beepit

Typed or Printed Name of Person Signing Certificate

Cassandra Beepit

Applicant : Keith et al.
Serial No. : 10/024,701
Filed : December 17, 2001
Page : 2 of 2

Attorney's Docket No.: 13764-003001

inventors. Specifically, as set forth in the Declaration, Richard Forrest specifically requested that all correspondence relating to the above-identified application be directed to him.

This evidence is sufficient to establish that copies of the application papers were provided to Chandrika Govardhan and Nazar Khalaf and that Richard Forrest represents Chandrika Govardhan and Nazar Khalaf on this matter. This evidence and the evidence submitted in the Petition Under 37 CFR §1.147(a) indicate that Chandrika Govardhan and Nazar Khalaf are unwilling to sign the Combined Declaration and Power of Attorney for this application. Therefore, Applicants respectfully request reconsideration of the Petition Under 37 CFR §1.47(a) filed October 28, 2002.

Respectfully submitted,

Date: _____

6/11/03



Laurie Butler Lawrence

Reg. No. 46,593

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner for Patents
Washington, D.C. 20231

DECLARATION OF LAURIE BUTLER LAWRENCE, ESQ. IN SUPPORT OF THE
PETITION UNDER 37 CFR 1.47(A)

Sir:

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JUN 17 2003

I, Laurie Butler Lawrence, hereby declare as follows:

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1. I am employed by Fish & Richardson P.C. and represent CUBIST
PHARMACEUTICALS, INC. (hereafter "Cubist") as outside counsel.

2. On April 11, 2002, I sent a letter to Shannon Shippie at Cubist enclosing a Combined
Declaration and Power of Attorney for the above-identified application. Chandrika Govardhan
and Nazar Khalaf were copied with enclosures on this correspondence.

3. On June 20, 2002, I received an email from Richard Forrest, General Counsel for
ALTUS BIOLOGICS, INC. In that correspondence Richard Forrest stated that "Chandrika
Govardhan, a scientist here at Altus, brought to my attention a letter dated April 11, 2002 from
Laurie which was sent directly to Chandrika and Nazar Khalaf (another scientist)" ...If you have
difficulty locating this correspondence, which included assignment documents among other
materials please let me know." In addition, in that same correspondence, Richard Forrest stated

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being
deposited with the United States Postal Service as first class mail with
sufficient postage on the date indicated below and is addressed to the
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Deposit

6/11/03

Signature

Cassandra Beepot

Typed or Printed Name of Person Signing Certificate

Cassandra Beepot

Applicant : Keith et al.
Serial No. : 10/024,701
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Page : 2 of 2

Attorney's Docket No.: 13764-003001

"I also formally request that any and all future correspondence relating to this matter be directed to me and our outside counsel."

4. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 10/11/03

Laurie Lawrence
Laurie Butler Lawrence
Reg. No. 46,593

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906



Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

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Web Site
www.fr.com

April 11, 2002

Shannon Shippie
Patent Paralegal
Cubist Pharmaceuticals, Inc.
Legal and Business Development
65 Hayden Avenue
Lexington, MA 02421



BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Re: METHODS FOR PREPARING PURIFIED DAPTOMYCIN

Applicant: Keith et al.
Application No.: 10/024,701
Filing Date: December 17, 2001
Country: United States
Our Ref.: 13764-003001

Dear Shannon:

Enclosed please find a copy of the official Filing Receipt as received from the U.S. Patent and Trademark Office. The above patent application has been assigned Serial No. 10/024,701 and a filing date of December 17, 2001.

The U.S. Patent and Trademark Office has now set a formal deadline of May 27, 2002, for filing the signed Combined Declaration and Power of Attorney in the above application. This deadline may be extended automatically for up to five, one-month periods upon payment of an extension fee when the documents are filed.

Therefore, we have also enclosed to the inventors the following formal papers:

1. One copy of a Combined Declaration and Power of Attorney. The inventors should sign and date this document. This document does not need to be notarized. If any changes are made to this document, the inventor should initial the changes.
2. Two copies of an assignment document for each inventor. Both copies should be signed and dated by the inventors. The signature must be exactly as typed. The assignments must be signed or acknowledged by the inventors in the presence of a notary, who should in turn sign and apply his or her notarial seal where indicated.

FISH & RICHARDSON P.C.

Shannon Shippie
April 11, 2002
Page 2

We look forward to receipt of the signed formal documents.

Very truly yours,



Laurie Butler Lawrence

LSB/rjh

Enclosures

cc w/ enc.: Jill Mandelblatt, Ph.D., Cubist Pharmaceuticals, Inc.
Dennis Keith
Chandrika Govardhan
Nazer Khalaf

20416801.doc



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JUN 17 2003
OFFICE OF PETITIONS

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled METHODS FOR PREPARING PURIFIED DAPTOMYCIN, the specification of which:

☐ is attached hereto.

☒ was filed on December 17, 2001 as Application Serial No. 10/024,701 and was amended on _____.

☐ was described and claimed in PCT International Application No. _____ filed on _____ and as amended under PCT Article 19 on _____.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information I know to be material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim the benefit under Title 35, United States Code, §119(e)(1) of any United States provisional application(s) listed below:

<u>U.S. Serial No.</u>	<u>Filing Date</u>	<u>Status</u>
60/256,268	12/18/2000	Expired
60/274,741	03/09/2001	Expired

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information I know to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

<u>U.S. Serial No.</u>	<u>Filing Date</u>	<u>Status</u>
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I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed:

<u>Country</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Priority Claimed</u>
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

Louis Myers, Reg. No. 35,965

Laurie Butler Lawrence, Reg. No. 46,593

Address all telephone calls to LAURIE BUTLER LAWRENCE at telephone number (617) 521-7814.

Address all correspondence to LOUIS MYERS at:

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Full Name of Inventor: Dennis Keith

Inventor's Signature: _____ Date: _____
Residence Address: 8 Mendle Terrace, Montclair, NJ 07042
Citizenship: United States
Post Office Address: 8 Mendle Terrace, Montclair, NJ 07042

Full Name of Inventor: Chandrika Govardhan

Inventor's Signature: _____ Date: _____
Residence Address: 9 Scotland Rd, Lexington, MA 02420
Citizenship: India
Post Office Address: 9 Scotland Rd, Lexington, MA 02420

Full Name of Inventor: Nazer Khalaf

Inventor's Signature: _____ Date: _____
Residence Address: 14 Lauf Street, Worcester, MA 01602
Citizenship: _____
Post Office Address: 14 Lauf Street, Worcester, MA 01602

ASSIGNMENT

For valuable consideration, we, DENNIS KEITH of 8 Mendle Terrace, Montclair, NJ 07042, CHANDRIKA GOVARDHAN of 9 Scotland Rd., Lexington, MA 02420, and NAZER KHALAF of 14 Lauf Street, Worcester, MA 01602, hereby assign to:

Cubist Pharmaceuticals, Inc., a Delaware corporation having a place of business at:

65 Hayden Avenue
Lexington, MA 02421; and

its successors and assigns (collectively hereinafter called "the Assignee"), the entire right, title and interest throughout the world in the inventions and improvements which are subject of an application for United States Patent signed by us, entitled METHODS FOR PREPARING PURIFIED DAPTOMYCIN, filed December 17, 2001, and assigned U.S. Serial Number 10/024,701, and we authorize and request the attorneys appointed in said application to hereafter complete this assignment by inserting above the filing date and serial number of said application when known; this assignment including said application, any and all United States and foreign patents, utility models, and design registrations granted for any of said inventions or improvements, and the right to claim priority based on the filing date of said application under the International Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the European Patent Convention, and all other treaties of like purposes; and we authorize the Assignee to apply in all countries in our name or in its own name for patents, utility models, design registrations and like rights of exclusion and for inventors' certificates for said inventions and improvements; and we agree for ourselves and our respective heirs, legal representatives and assigns, without further compensation to perform such lawful acts and to sign such further applications, assignments, Preliminary Statements and other lawful documents as the Assignee may reasonably request to effectuate fully this assignment.

IN WITNESS WHEREOF, I hereto set my hand and seal at _____,
this _____ day of _____, 2002

DENNIS KEITH L.S.

State of _____ :
: ss.

County of _____ :

Before me this _____ day of _____, 2002, personally appeared
DENNIS KEITH known to me to be the person whose name is subscribed to the foregoing
Assignment and acknowledged that he executed the same as his free act and deed for the
purposes therein contained.

Notary Public

My Commission Expires:

[Notary's Seal Here]

IN WITNESS WHEREOF, I hereto set my hand and seal at _____,
this _____ day of _____, 2002.

CHANDRIKA GOVARDHAN L.S.

State of _____ :
: ss.

County of _____ :

Before me this _____ day of _____, 2002, personally appeared
CHANDRIKA GOVARDHAN known to me to be the person whose name is subscribed to the
foregoing Assignment and acknowledged that he executed the same as his free act and deed for
the purposes therein contained.

Notary Public

My Commission Expires:

[Notary's Seal Here]

IN WITNESS WHEREOF, I hereto set my hand and seal at _____,
this _____ day of _____, 2002.

NAZER KHALAF L.S.

State of _____ :
: ss.

County of _____ :

Before me this _____ day of _____, 2002, personally appeared
NAZER KHALAF known to me to be the person whose name is subscribed to the foregoing
Assignment and acknowledged that he executed the same as his free act and deed for the
purposes therein contained.

Notary Public

My Commission Expires:

[Notary's Seal Here]